

**REMARKS:**

Two instances of claim 30 were filed. The first instance of claim 30 was cancelled and re-asserted as claim 35.

Claims 1-24 and 26-34 were rejected under 35 U.S.C. §103(a) for being unpatentable over Lin et al. (U.S. Pub. 2005/0096071) in view of Lielbriedis (U.S. Pub. 2001/0051528). The detailed remarks did not address claim 25, though the PTOL-326 listed each of claims 1-34 as rejected.

Respecting claim 20, the Examiner states:

“Lin discloses while the telephone call is on-going, a user selectable option to transfer data to another party participating in the telephone call without user specification of a destination address. (The user interface of Lin comprises 3 buttons, including a first button for sending (or pushing) data to the second terminal. In step 512, wherein button 410 for sending data was pressed, the wireless device 106 identifies the data for sending to the wireless device 108 and in step 513 the data is sent. (Para 38))”

Respecting claim 28, the Examiner states:

“Lin et al. discloses a method of sending data from a first party participating in a telephone call to a second party in the telephone call (Lin teaches a system and method for communicating data over a voice channel on a wireless device. The method includes establishing an audio connection with a second device providing an interface for a user for sending data to the second device (Abs))”

Claims 20 and 28 were amended to recite in part “via a new channel that runs in parallel with a voice channel used for the telephone call”

Lin et al. does not disclose the creation of a separate data channel that uses an address determined from the logged telephone call (claims 24, 30).

Therefore the amendment of claims 20 and 28 are seen to patentably distinguish over Lin et al. and so claims 20 and 28 are seen to be allowable.

Respecting claims 1, 12, 33-34 the Examiner states:

“Lin et al. discloses a method of sending data from a first party participating in a telephone call to a second party in the telephone call (Lin teaches a system and method for communicating data over a voice channel on a wireless device. The method includes establishing an audio connection with a second device providing an interface for a user for sending data to the second device (Abs))”

Lin et al. discloses the creation of a telephone call between two wireless devices. The user of one device pushes a button to send data while the telephone call is ongoing. This document does not disclose the creation of a separate data channel that uses an address determined from the logged telephone call as cited in claims 20 and 28. Unlike claims 20 and 28 amended herein, claims 1, 12, 33 and 34 do not explicitly recite a separate channel. Taking claim 1 as representative, what it does recite is:

storing, as a consequence of the telephone call, identifier data that identifies the second party;  
using the stored identifier data to determine automatically a destination address for a data message; and  
sending, during the telephone call, the data message with the automatically determined destination address.

The data message of claim 1 is sent to a destination address that is automatically determined from stored identifier data. But in claims 1 and 12 that identifier data is stored “as a consequence of the telephone call” (claims 1,12). Claims 33 and 34 recite similarly as (respectively) “as a consequence of a communication” and “as a consequence of the communication”. So the destination address of claim 1 CANNOT be the same ‘address’ to which the telephone call was originally directed, simply because it is determined from an identifier that is stored only *as a consequence* of that same telephone call. Lin’s teaching of sending data over a voice channel over which a telephone call is ongoing fails to disclose teach or suggest sending a data message to a destination address as that destination address is recited in claim 1. Lin is seen to teach

sending data over the pre-established voice channel that carries the telephone call, and the Examiner's characterization of Lin appears to agree. Thus claims 1, 12, 33 and 34 are seen to distinguish over Lin for reasons similar to claims 20 and 28, though they recite in different language.

Lielbriedis discloses the use of an SMS message to notify a user at a mobile terminal that an email addressed to the user has arrived at a server. The email can be accessed by replying to the SMS message. When the email arrives at the mailbox of a server, it is stored in a database at that server. The server also comprises a notification engine which derives a mobile subscription no. from the destination address of the email. The notification engine notifies the user by SMS message that the email has arrived, using the mobile subscription no. as the destination address. If the user replies to the SMS message, a message will be sent to the notification engine indicating that the user wishes to access the email. The destination address of the reply message will be the originating address of the first message i.e. the address of the notification engine. The email is then transmitted to the user.

Lielbriedis therefore does not disclose the creation of a separate data channel as recited in claims 20 and 28, nor sending of data to a destination address as recited in claims 1, 12, 33 and 34, nor the fact that the channel is selected in an ad-hoc fashion (e.g. by the user, see claims 21, 23, 29 and 30). Such an ad-hoc connection is described on page 7 lines 18-32 of the patent application:

Then having determined the data delivery addresses, the processor 30 at step 112 controls the display to present for user selection one or more delivery mechanisms related to the determined delivery addresses.

If the determined delivery addresses includes a mobile telephone number, the delivery mechanisms may include: Short Messaging Service (SMS) which is suitable for alphanumeric text or Multimedia Messaging Service (MMS) which is suitable for still images.

The delivery mechanisms presented may be related to the application from which the selection has been made. Thus SMS is only presented if the selection is from an application that is text-based such as a Calendar, Contacts or text messaging. Thus MMS is only presented if the selection is from an application that is image-based such a digital camera application or an application that has the ability to

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insert images therein.


Embodiments of this invention therefore have certain advantages over the prior art. For example, the data channel can be of a greater bandwidth and need only be set up on demand which would save network resources.

Claims 1, 12, 33 and 34 would not have been obvious in view of the prior art documents for the above reasons and should therefore be allowable.

Dependent claims 2-11, 13-19, 21-27, and 29-32 are dependent on independent claims 1, 12, 20, or 28 and so are allowable at least for that reason.

The Examiner is respectfully requested to reconsider and remove the rejections of claims 1-35 under 35 U.S.C. §103(a) and to allow all of the pending claims 1-35 as herein amended. For all of the foregoing reasons, it is respectfully submitted that all of the claims are clearly novel and patentable over the prior art of record. Should any unresolved issue remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

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